11409 Frances Green Drive
North Potomac, Maryland 20878
January 4, 2017

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

.

RE: COMMENT SOUGHT ON STREAMLINING DEPLOYMENT OF SMALL CELL INFRASTRUCTURE
MOBILITIE, LLC PETITION FOR DECLARATORY RULING
WT Docket No. 16-421

Dear Ms. Dortch:

Enclosed herein please find my comments regarding the subject petition and the regulatory proceedings of the Federal Communications Commission (FCC) related to this petition. I have also sent in the required two copies of these comments by U S Mail. This letter is five pages in length.

While I appreciate the efforts of the FCC's Wireless Telecommunications Bureau (WTB) to help assure that there are not unnecessary delays in implementing new technologies, I am deeply concerned that WTB may have overstepped its implied mission by not applying basic Federal safety standards and review processes as well as may be unintentionally, through misinterpretation of FCC's mission in this matter, usurping the fundamental rights of state and local jurisdictions.

Public safety may not have been adequately addressed:

While I understand that the FCC feels that it has adequately addressed the health issues associated with the placement of cell towers, I believe that the issues associated with the unique characteristics of the Distributed Antenna Systems (DAS) may not have been properly addressed as per their impact on public safety. I want to be perfectly clear that I am not discussing already addressed health issues, I am addressing safety issues which have not been addressed. The DAS are unique and cannot be thought of as being the same as traditional cell towers because of their placement, quantity and construction attributes.

First of all, there will be many more of these DAS units proliferated around a municipality than there are cell phone towers. The cell phone towers are typically placed on building tops, the tops of high voltage power line structures and in exclusive fenced in plots. They are not typically

along side community road ways, at street corners where school busses stop, nor in front of residences. These DAS will present certain safety hazards and by the nature of their placement, present these safety hazards in so many more locations. At this point, I want to be perfectly clear that I am not expressing concerns over radiation issues associated with cell phone towers. I understand that the FCC is comfortable with concept that such radiation should not be of concern regarding the public's health.

Let me address below some of the safety issues and questions related to the DAS and to reiterate that these safety concerns are amplified by the fact that these units will be so ubiquitous. By nature of the installation and configuration of these DAS as seen in Montgomery County, Maryland:

- There are now sources of electric power fairly close to the ground that were not there before. The electric power company's meters are placed around 5 feet off the ground and there are live wires in the meter mounts. While this may be OK with code requirements, we will have a lot of poles soon with the power so close to the ground.
- These cells are all grounded with wires that run from the top of the pole to the ground below the poles. These poles are in effect lightning rods.
- There are no locks on the electric shut off box making them susceptible to vandalism, or accidental electric contact. Anyone can shut off the cell and disrupt communications, or get shocked.
- There is a terminal block exposed on the pole with some fairly substantial wires on it coming from the brown box. There is an unknown potential on these terminals and it is possible that connection, or misconnections within the brown box, may place a dangerous potential on these exposed terminals. (note: The referenced brown box is the rather large metal box that has been mounted on the utility poses to house the functional components of the DAS as well as its interconnections between the cell equipment and the land lines.)
- Has there been any testing regarding stray ground currents around these poles?
- The DAS requires that many heavy land line cables be run to the brown boxes to facilitate the transition of cell calls to the switching land line networks. The placement of these extra and usually large cables adds significant weight to the poles as well as the presentation of potentially falling cables that would not have been otherwise present.
- If a car, or truck should hit one of these poles upon which a DAS has been mounted along with its supporting cables and connection equipment box, there is a higher likelihood of electric contact from the low placed meter as well as the big brown box falling on the car, or people. Also, the weight of these units has required the installation of much stronger poles to replace the existing poles. Now, when the people in a vehicle striking a pole would have had a survival chance, such a chance is diminished due to the strength of these new poles.

As can see from the above list, which is likely not exhaustive, the profusion of so many DAS units has the potential of presenting communities with safety hazards that were likely never envisioned. I even saw one of these units installed next to a very active day care center. It is incumbent upon the FCC to assure that their push to assist industry in spreading a new technology does not sacrifice the safety of the public. It appears by this initiative to streamline

deployment of DAS that the WTB may be overlooking mandatory consideration of safety issues in the name of the profit for a commercial entity. Well, the Federal regulatory agencies really do not have a choice. The FCC must turn over every stone to assure that in the name of technology, that basic tenants of public safety have not been overlooked.

Appropriate consideration of relevant federal laws may not have taken place nor formal coordination with relevant federal agencies:

There are many federal regulations that talk in terms of this assurance for public safety being paramount to technology expedience. WBT and the FCC must unequivocally assure that there have been exhaustive studies concerning the safety risks that may very well be presented by roll outs of DAS.

At a minimum The Administrative Procedures Act (APA) Pub.L 79-404, 60 sat. 237. addresses proper agency behavior regarding the protection of public safety.

The Consumer Product Safety Act (CPSA) Publ. 92-573n stat.1207-Oct. 27, 1972 and the various acts and regulations which have defined and expanded the authority and roles of the Federal Trade Commission are quite clear as to the need for any new technologies and products to carry with them the assurance that the safety of the public is not diminished by the fielding of a product.

The intended proliferation of DAS along roadways may bring to bear regulations under the Federal Motor Carrier Safety Administration.

There does not seem to have been an adequate and appropriate review of the DAS initiatives by the Environmental Protection Agency (EP). The distribution of these unsightly DASs may be counter to the intentions of the Highway Beautification Act. Also, while one can argue that these brown boxes should be designed to be placed underground from both an aesthetic and safety concerns, a likely counter argument would be that they need to be placed on the poles to allow the electronics to be cooled. Well, there is a concern for EPA that these units are generating heat and therefore adding to global warming. Has a required Environmental Impact Assessment (EIA) be done and has there been a formal finding of No Significant Impact (NSI). Further, why has there not been consideration of a requirement that these units be installed with supplemental power solar panels. It seems that this "new technology" is ripe for such an environmentally friendly option. It seems obvious that this proposed FCC rule must be reviewed and cleared by the EPA.

The above agencies are examples of how the DAS's impact may not have been exhaustively reviewed. Has there been coordination directly with the various federal agencies who might have relative roles and regulations? I am citing direct coordination, no assuming that an agency person may see a Federal Register notice and provide comments. When it comes to public safety, the rush to impellent a technology cannot run over the roles of other agency and the rules of law.

It is important to also note that even through the improvement of FCC's Section 6409 (a) there is a mandatory need to consider public safety impact in addition to health impact and that WTB

does not appear to have provide such a rigorous safety review and coordination associated with the deployment of DAS as well as the safety issues that are associated with the reconfiguration of supporting structures for the DAS. As pointed out earlier, DASs are not structurally the same as traditional cell towers, nor are they protected from public safety hazard as are the traditional cell towers. In fact the improved section 6409 (a) recognizes that local governments may require a request to comply with generally applicable building, structural, electrical, and safety codes, or with other laws codifying objective standards reasonably related to health and safety.

FCC may be usurping the rights of local citizens and municipalities to due process of law

There is one more issue brought to the forefront by DAS deployments. Yes, there have been many municipalities which have worked through their regulations and processes to define the rules for DAS deployment, but not all localities are the same in how they approach such actions. Further, not all citizens within the municipality are willing to waive protection rights when it comes to their safety. As mentioned at the outset, by their nature, DAS units are not the same when it comes to their location. One may be on a street corner where children wait for school busses, while another me sit well within a right of way distant from public exposures. While WTB is noteworthy in their attempt to assist in deploying new communications technologies .it does not seem that it is incumbent upon this bureau to support the profit motives of commercial enterprise to displace public safety.

Also, of deep concern is that the FCC may be usurping the rights of local governments and municipalities to process the addition of utilities and technology objects within their jurisdictions according to their own rules, regulations and laws. Legal local due process cannot be just swept aside by a rulemaking at the federal level.

Antitrust laws may be inadvertently not considered

While it is noteworthy that the FCC is attempting by this effort to help expedite the installation of technologies, the rush to implement approach may inadvertently be violating basic antitrust laws. It is clear that the envisioned process will be to the advantage of Mobilitie LLC and similar large companies such as American Tower Company. The business of small companies wanting to install larger cell towers may be inhibited. Have the Justice Department's Antitrust Division and The Small Business Administration been formally asked to review this initiative to assure consistency with applicable antitrust laws? If not, such a review are mandatory.

Required economic impact assessments may not have been performed

With all of the above mentioned items considered as well as many more that will surface through comments on this action, it is apparent that many legal actions will ensue. Some of these will legal actions will likely involve not only the FCC but many other federal agencies. Costs to the federal government are likely to be incurred. There does not seem to be any indication that a review of this action concerning such costs has been done by the Office of Management and Budget (OMB). A cost benefit analysis regarding impact of this rule must be done and reviewed and approved by OMB. A factor to be considered in such a review in addition to the overall aspects of this rulemaking is whether or not this DAS concept is truly a means to make cell

service more available as opposed to large cell towers, or is it a tax advantage activity, or a forced cost advantage.. It is hard to envision why so many mini cells with all of their supporting infrastructure could be more economical than a major cell serving a wider area. If DAS is truly more economical without certain tax advantages and forced savings than could we be far away from installing power stations on every street corner? No, what is happening here appears to be giving the DAS company an advantage by lowering their installation costs to advantage them against the more costly upfront costs for major cell towers. This concept needs to be reviewed. Also, given there will be a new administration in place before this rulemaking is finalized, it would seem that this new administration that has already made its position clear on new rules by the federal government, would want a say in the implementation of this proposed rule.

I believe that I have laid out many legal and procedural issues that must be addressed before any rules can be promulgated by WTB and the FCC that demand local entities process a technological deployment regardless of potential impacts on the safety of the public. At a minimum the WTB and FCC must address each and every issue raised herein. Full coordination must formally take place between the FCC and all relevant agencies. These are basic tenants of all regulatory federal agencies. Would the Nuclear Regulatory Commission, The Environmental Protection Agency, The Federal Aviation Administration, or OSHA proceed with a mandate that local entities must facilitate a commercial endeavor without strict adherence to the consideration to all safety matters and relevant federal regulations and laws? I sincerely doubt it. Further, the WTB and FCC must request an independent counsel's review of this entire issue to assure that what is intended is truly within the legal purview of the FCC.

Respectfully:

Richard Weiner